BAIL SLIP

The Appellant in Crl.A.No.575/2000 viz., Periya Puttappa was directed to be released on bail as per the order of this Court dated 31.7.2000 and made in Crl.MP.No.3994/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.09.2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

CRL.A.No.575 of 2000

Periya Puttappa ... Appellant/Accused

Versus

State by
Inspector of Police,
Bagalur,
Dharmapuri District. ... Respondent/Complainant

For Appellant : Mr.M.V.Krishnan
For Respondent : Mr.N.Kumanan,
Govt.Advocate (Crl.Side).

This Criminal Appeal filed under Section 374 Cr.P.C. against the Conviction and sentence dated 21.6.2000 made in S.C.No.49 of 1995 on the file of the Second Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri.

JUDGEMENT

Aggrieved over the conviction for the offence under Section 304 (ii) I.P.C. passed in S.C.49 of 1995 dated 21.6.2000 by the Second Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri and the sentence imposed against the accused to undergo five years rigorous imprisonment and to pay a fine of Rs.1000/-, this appeal has been preferred.

2.Brief facts of the case are as follows:

The deceased is senior paternal uncle of P.W.1. The accused is junior paternal uncle of P.W.1. P.W.3 is sister-in-law of P.W.1. P.W.4 is neighbour of the deceased. According to P.W.1 on 10.10.1993 when he went to see his friend, his brother's wife P.W.3 was taking water from the tap. The son of the accused threw stone on P.W.3 and while seeing the same he asked the accused as to why he threw stone on P.W.3 and consequently there was a quarrel arose between them. The deceased came there and the accused threw a stone on his chest and he fell down. Thereafter the accused kicked on the chest of the deceased. The injured was taken to the hospital, where Doctor examined the deceased and reported that he is dead. P.W.1 and the

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villagers reported the incident to the P.W.2,Village Administrative Officer. He recorded the statement which has been marked as Ex.P1.

3.P.W.2 prepared a report and gave a complaint to the police station and a case was registered in Crime No.155 of 1993 under Section 302 I.P.C. Then the Inspector of Police went the place of occurrence and prepared Ex.P3 observation mahazar and Ex.P9 rough sketch. On 12.10.1993 P.W.11, the Inspector of Police arrested the accused at Perigai Kulagiri Road. On the basis of confession statement given by the accused M.O.1 was recovered under a cover mahazar of Ex.P.5 in the presence P.W.2 and one Krishnamurthy. The admitted portion of the confession statement is Ex.P5. Pursuant to the confession statement M.O.1 was recovered under a cover of mahazar Ex.P.5. P.W.11 conducted inquest on the body of the deceased and prepared Ex.P10 inquest report. He sent the body through P.W.9 Police constable with Ex.P7 requisition for post mortem. P.W.10, Doctor attached to Hosur Government Hospital conducted post mortem on the body of the deceased on 1.10.1993 and found the following injuries:

> "External injuries:
>
> 1)Swelling 5 x 4 cm left costal margin, anterior aspect, on midclavicular line and medial to it.
>
> Internal Examination:
>
> Hyoid bone intact. Fracture of 6th rib left side, just medial to midclavicular line. Lungs-Right 375 gm. Left 350 gm. Lacerated wound 5 x 3 cm anterior aspect of left lower lobe close to inter lober fissure. Haemotoma 3 x 2 x 2 cm anterior aspect of left upper lobe close to inter lober fissure with surrounding congestion. C/s congested. Heart-150 gm - all chambers empty. Stomach contains partially digested ragi particles. Liver 950 gm C/s congested. Kidneys-Right, Left 100 gm C/s congested. Spleen 125 gm. Bladder-Empty. Skull-No fracture. Brain-1000 gm. Membranes intact. Base of skull- no fracture. PM exam concluded at 12 noon. No fracture. PM exam concluded at 12 noon."

P.W.10 gave opinion that the deceased would appear to have died of injury to vital organ left lung about 18-20.

4.P.W.11 examined the witnesses and recorded their statements. M.Os.2 and 3 were recovered. After completion of investigation charge sheet has been laid against the accused.

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5.Before the learned II Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri on behalf of the prosecution P.W.1 to 11 were examined and Exs.P1 to P10 and M.Os.1 to 3 were marked. On behalf of the accused no witness was examined and no document was marked.

6.When the accused was questioned under Section 313 of Cr.P.C. with regard to incriminating circumstances appearing in the evidence of the prosecution witnesses, the accused denied the same as false.

7.On consideration of both oral and documentary evidences, the learned II Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri came to the conclusion that the offence alleged against the accused under Section 302 I.P.C. is not proved and convicted the accused under Section 304 (ii) IPC and sentenced him to undergo five years rigorous imprisonment and imposed a fine of Rs.1000/- and in default to undergo further three months rigorous imprisonment.

8.Aggrieved over the said conviction and sentence, the accused preferred this appeal.

9.Mr.M.V.Krishnan the learned counsel appearing for the appellant would contend that the offence said to have been committed by the accused would squarely come under Section 325 I.P.C. Stone is not a dangerous weapon and simple hurt was only caused by the accused. Unfortunately the hit by the stone thrown on the chest had caused the death of the deceased, since the deceased is aged about 65 years and therefore the offence is squarely applied under Section 325 IPC. Considering the occurrence took place in a sudden wordy quarrel and the weapon used by the accused and the injury caused on the accused, the offence would fall only under Section 325 I.P.C.

10.If "grievous hurt" is caused by means of any instrument for shooting, stabbing or cutting,or any instrument which used as a weapon of offence, likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood or by means of any animal, and such hurt is said to be a grievous hurt punishable under Section 326 I.P.C. Grievous hurt caused by weapons which are not dangerous as defined above is an offence punishable under Section 325 I.P.C.

11.The stone does not find a place in any one of them as defined above. Therefore stone is not a dangerous weapon. It is an admitted fact that the incident had taken place due to wordy quarrel. Hence, it is clear that the accused would not have intended to cause the death of the deceased nor such an injury as was likely to cause his death.

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12.The learned counsel for the appellant submitted a judgment dealing with similar facts of the case in Lingam v. State rep. by Public Prosecutor reported in 1996 (2) MWNA(Cr.)346., wherein the learned Judge has held as follows:

> "16.In my earlier discussion, I have concluded that the prosecution has clearly established that the appellant merely threw with the stone that hit on the head of the deceased and that hit has resulted in his death. But the question is as to whether the accused had the knowledge that his act would cause injury which likely to cause death.
>
> It it not in dispute that at the time of occurrence there was a scuffle between the victim deceased and the accused and that the deceased fell down and the appellant took a small piece of brick as referred to in the evidence of P.W.1 and threw it on the deceased.
>
> 17.Mr.K.N.Thambi, learned counsel for the appellant brought to my notice a judgment reported in 1985 Crl. L.J. NOC (Kant.) (Division Bench) in the case of State of Karnataka v. Bhimappa and others, wherein it was held on the similar facts that in a quarrel between two parties and both parties started pelting stones and the stones pelted by accused hitting victim resulted in death, it was held the accused can be convicted under Section 325 I.P.C. That was a case where, there was a quarrel going on at the time of the incident in which persons from both sides started pelting stones at each other and, in that melee, persons from both sides sustained injuries. At that time, two accused A2 and A-13 who were on the side of the accused persons, in a spur of moment, also pelted stones without knowing its consequences, which hit the deceased and caused grievous injuries resulting in death. In the light of the above facts, the Division Bench of Karnataka High Court held that merely because A2 and A13 hit the deceased at that moment, it cannot be said that they had intention of causing the death of the deceased or they had knowledge that the injuries sustained by the deceased were likely to cause his death. Thus the accused A2 and A13 were found guilty for offence under Section 325 I.P.C.

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13.In yet another decision rendered by a Division Bench of this Court in Jayapal v. State (C.A.No.884 of 1983 judgment dated 23.7.1987). while dealing with the similar facts of the case, held as follows:

> "It is also not in dispute that the accused threw it on the deceased without aiming at any part of the body. The measurement of the stone as referred to in Ex.P5 Athatchi would show that it was a very small stone. So from the evidence on record, as discussed earlier, it is impossible to hold that a small piece of brick stone used by the appellant was a weapon from which a knowledge could be attributed to him that the hit by such stone would cause death. The fact that the appellant and the deceased were brothers cannot be overlooked. It is also available in the evidence that on the fateful day, there was a wordy quarrel between them at 3.00 p.m. As well as at 5.30 p.m. Not only that when they came to the road side, a wordy quarrel has developed into a scuffle in front of Jambulingam's house. Therefore, taking all these factors into consideration, I am not able to come to a conclusion that the offence committed by the accused would be one under Section 304 Part-II I.P.C. Looking at a small brick used by the appellant and looking into the fact that wordy quarrel and scuffle was going on between these brothers, it could be safely held that the appellant could be attributed only with the intention to cause a grievous hurt to the deceased. Unfortunately, the hit by stone throw on the head had resulted in death. It is also relevant to note that the witnesses P.Ws.2, 3 and 4 nowhere stated that throwing of a stone was made with any force the court found the accused guilty only under Section 325 I.P.C. The observation made in the judgment is as follows:
>
> "The next question that arises for our consideration is what is the nature of the offence that the appellant-accused has committed. It was an unexpected quarrel which unfortunately had resulted in the death of the deceased. Firstly he beat the deceased only with his hand and only thereafter he took a stone which was lying nearby and gave a hit with it on the chest of the deceased. Hence, it is clear that he would not have intended to cause the

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death of the deceased nor such an injury as was likely to cause his death. Therefore, we hold that the facts and circumstances would indicate that the accused would have caused the injury and accordingly the offence would be one punishable under Section 325 I.P.C."

19.So I am in entire agreement with the observation made by the Division Bench of this court as mentioned above. In this case, in a sudden quarrel which took place while deceased and the appellant were along the road and at the spur of the moment, when there was a scuffle, the appellant took a stone and threw it on the body of the deceased which unfortunately, hit on the head. For the foregoing analysis of the evidence and the principles laid down in the above decisions, I am of the view that the appellant could not have had knowledge to cause injury as is likely to cause death. Therefore, I have no hesitation in holding that the facts and circumstances would indicate that the accused would have caused injury with the intention of causing grievous injury. Accordingly, the offence is punishable only under Section 325 I.P.C. As such the conviction imposed upon the appellant under Section 304 Part II I.P.C. is set aside. Instead, he is convicted for offence under Section 325 I.P.C. In view of the above situation, I feel that the ends of justice would be set by imposing a sentence of two years Rigorous Imprisonment for the above offence of Section 325 I.P.C. and in addition to the sentence, a fine of Rs.1,000/-(one thousand) is imposed, in default, to suffer Rigorous Imprisonment for six months. Time for payment of fine is one month from the date of receipt of a copy of this judgment by the trial Court and this amount of Rs.1,000/- collected as fine is to be given to P.W.2, wife of the deceased as compensation. The trial court also after receipt of a copy of this judgment, is directed to intimate the same to P.W.2 to enable her to come to court and receive the same. Regarding two years period, Mr.Thambi, learned counsel for the appellant brings to my notice that there are Government Orders available granting remission for the above period of two years. Learned Government Advocate also does not dispute that fact and he brings to my notice the following Government Orders:

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1.G.O.Ms.No.180 dated 28.1.1989.
2.G.O.Ms.No.781 dated 11.4.1990.
3.G.0.Ms.No.279 dated 23.2.1992.
4.G.O.Ms.No.296 dated 20.2.1993.
5.G.O.Ms.No.205 dated 23.2.1994.

Since these Government Orders are applicable to the appellant, I am of the view that he is entitled to invoke the benevolent provisions of these G.Os. As such, the appellant need not surrender before the Prison Authorities to undergo the un-expired portion of two years sentence which has been imposed for offence under Section 325 I.P.C., since the said period of two years has already been covered by virtue of the above referred G.Os. With these observations, the Criminal Appeal is partly allowed."

14.As far as this case is concerned, the accused is said to have thrown a stone which hit on the chest of the deceased. The Accused has neither intention to cause death of the deceased nor had knowledge that such act may cause death. Since the weapon used is not a dangerous weapon as defined under Section 326 I.P.C. the offence committed by the accused is under Section 325 I.P.C.

15.In the above circumstances, I feel ends of justice would be met if the sentence of five years rigorous imprisonment imposed on the accused is modified as one of six months and in addition to the sentence an additional fine of Rs.1000/-is imposed. From the above period of imprisonment, the period already undergone by the accused shall be set of.

16.With the above modification, the appeal is partly allowed. The said fine amount shall be paid within four weeks from the date of receipt of a copy of this judgment. The additional fine amount of Rs.1000/- shall be paid as compensation to the legal heirs of the deceased. The learned II Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri is directed to secure the accused to remand him to undergo remaining period of sentence.

vk

Sd/-
Asst. Registrar

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Sub Asst.Registrar

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To

1.The II Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Krishnagiri.

2. -do- Thro' The Prl. District Judge, Dharmapuri.

3.The Public Prosecutor,High Court, Madras.

4.The Inspector of Police,Bagalur, Dharmapuri District.

5.The Judicial Magistrate No.I, Hosur.

6.-do- Thro' The Chief Judicial Magistrate, Krishnagiri.

7.The Superintendent, Central Prison, Vellore.

8.The District Collector, Dharmapuri.

9.The Director General of Police, Madras-4.

+ one cc to Mr.M.V.Krishnan, Advocate Sr.No.42863.

TEJ (CO)
RSM/25.10.2006

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